IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Badri Lal & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1624/2006 against the order dated 5-10-2006 passed by the Judicial Magistrate No.2, Bhilwara, in Criminal Regular Case No. 5/2003.

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Date of Order: December 12, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Nagraj Goswami, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the S.B. Criminal Misc. Petition No.757/2006, the petitioners seek to delete the name of non-petitioner No.2 from the array of the non-petitioners on the ground that the matter before the trial Court is a State case and inadvertently the complainant has been impleaded as non-petitioner No.2, and therefore, the complainant is not a necessary party and her name may be deleted from the array of the non-petitioners.

The application is allowed. The name of the non-petitioner No.2 is struck off from the array of the non-petitioners. The amended cause title has been filed and the same be placed at the appropriate place on the record.

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 5-10-2006 passed by the Judicial Magistrate No.2, Bhilwara (for short, "the trial Court" hereinafter), whereby the application filed by the accused-petitioners under Section 311 of the Code was dismissed.

Before the trial Court, the matter was posted for the evidence of prosecution witnesses on 5-10-2006. The accused-petitioners No.1 and 2, Badri Lal and Smt. Nandu, were present in the Court, however, accused-petitioner No.3 Smt. Kamla failed to appear before the trial Court and, therefore, an application seeking dispensing with her personal appearance was moved, which was accepted by the trial Court and the personal appearance of accused-petitioner No.3 Smt. Kamla was dispensed with. An application under Section 311 of the Code was moved before the trial Court seeking recalling of witness PW1 Smt. Sayari for cross-examination on the ground that earlier the accused-petitioners were being represented through their counsel Mr. Deepak Kumar, who did not cross-examine the witness PW 1 Smt. Sayari and, therefore, the cross examination of PW 1 Smt. Sayari was closed. Noticing inaction on the part of Mr. Deepak Kumar, the counsel earlier engaged by the accused-petitioners, the petitioners immediately changed the counsel and

sought recalling of witness PW 1 Smt. Sayari for cross-examination.

PW1 Smt. Sayari was examined on 17-9-2005 and counsel Mr. Deepak Kumar did not cross-examine the witness and, thereafter the petitioners immediately changed the counsel and engaged Mr. H.S. Rathore, who filed Power and sought time to obtain certified copies of the Challan papers and other documents so that he can prepare the case and cross-examine the witness and the matter was adjourned to 19-10-2005. It was informed to the Court that the counsel was out of station and time was sought. However, after affording opportunity in absence of the counsel, the witness could not be cross-examined.

The matter is at the initial stage of the trial. The statement of only one witness has been recorded and that too the examination-in-chief only. Keeping in view the fact that if statement of PW 1 Smt. Sayari remains uncontroverted then in a criminal case, prejudice is found to be caused to the accused-petitioners who are facing trial, therefore, in my view, in order to secure ends of justice, one more opportunity to cross examine witness PW 1 Smt. Sayari deserves to be granted to the present petitioners.

The criminal miscellaneous petition is allowed. The impugned order dated 5-10-2006 passed by the trial Court in

Criminal Case No. 5/2003 is set aside and the application filed by the accused-petitioners under Section 311 of the Code is allowed. The trial Court is directed to re-call witness PW 1 Smt. Sayari for cross-examination by the petitioners by fixing a date of hearing and affording one more opportunity to the petitioners. However, on the next date fixed by the trial Court, if PW 1 Smt. Sayari is present and still petitioners fail to cross-examine her, no further opportunity will be provided to them.

(H.R. PANWAR), J.

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